IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Nanak Chand Nagpal v. State of Rajasthan & Anr.

S.B.CIVIL WRIT PETITION NO.3642/1996
under Article 226 of the Constitution of India.

Date of Order : 21st September, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.P.Choudhary, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

In the instant petition for writ validity of order dated 1.10.1996 passed by Dy. Secretary to the Government of Rajasthan, Department of Personnel (Group-III), by the order of of Governor of Rajasthan is in question. By the aforesaid order the petitioner is placed under compulsory retirement as a measure of punishment.

The factual matrix leading to this petition is as follows:-

The petitioner while holding the post of Junior Engineer in Department of Irrigation was served with a memorandum dated 6.11.1985 under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as “the Rules of 1958”) communicating two charges of misconduct together with a statement of allegations and instructing the petitioner to submit in writing explanation or defence, if any, he has to offer.

The petitioner submitted a written statement of defence and denied the charges alleged. The disciplinary authority, therefore, appointed an inquiring authority to inquire into such charges. As the charges were concerned with three government servants, common inquiry proceeding was ordered to be taken against the petitioner with Shri C.L.Arora, Executive Engineer and Shri Shyopatram, Assistant Engineer. The proceeding against Shri C.L.Arora, the Executive Engineer, stood dropped under the orders of this Court by judgment dated 10.2.1992 in SBCivil Writ Petition No.2060/90.

The petitioner was charged for causing huge loss to the government due to negligence. The

allegations for which the petitioner was charged reads as under:-

"<u>आरोप संख्या : 1</u>

श्री नानक चन्द नागपाल जब 1975 से 1977 तक बाजूवाला उपखण्ड के अधीन कार्यरत थे तब इनके नियंत्रण में क्लिन 7 जे. के. एम. 11 पर मैसर्स एस. बी. क्लिन कान्ट्रक्टर, श्री गंगानगर द्वारा टाईलों के निर्माण का कार्य करवाया गया था।

उक्त क्लिन पर श्री नानक चन्द द्वारा कुल 1212.30 एम. टी. कोयला ठेकेदार को टाईल्स बनाने हेतु दिया गया एवं ठेकेदार द्वारा 26,31,899 टाईलों का का उत्पादन किया गया जिसके लिये निर्धारित मापदण्ड के अनुसार 802.20 एम. टी. कोयले की खपत होनी थी। इस प्रकार इन्होंने ठेकेदार को 412.10 एम. टी. कोयला अधिक दिया एवं इस अधिक कोयले की वसूली हेतु इनके द्वारा उक्त कार्य के हेतु बनाये गये बिलों में नियमानुसार लगने वाले "रिकवरी स्टेटमेंट" में उकत अधिक मात्रा में दिये गये कोयले को नहीं दर्शाया जिससे उक्त कोयले की राशि की वसूली ठेकेदार से नहीं की जा सकी, इस प्रकार इनकी इस लापरवाही से राज्य सरकार को रूपये 1,18,972/- की आर्थिक हानि हुई जिसके लिये श्री नानक चन्द दोषी है। स्पष्ट विवरण आरोप विवरण पत्र में अंकित है।

<u>आरोप संख्या : 2</u>

श्री नानक चन्द ने उक्त अवधि में उक्त पद पर कार्य करते हुए क्लिन 7 जे. के. एम. 11 पर चल रहे कार्य का निर्धारित लेखा जोखा नहीं बनाया और ना ही ठेकेदार को कोयला देते समय कार्य की प्रगति एवं मात्रा का ध्यान रखा। इस प्रकार श्री नानक चन्द कार्य के प्रति लापरवाही बरतने के दोषी है। स्पष्ट विवरण आरोप विवरण पत्र में अंकित है।"

The inquiring authority after holding requisite proceedings submitted his report alongwith record of inquiry to the disciplinary authority on 4.6.1993. The disciplinary authority under a communication dated 7.10.1993 supplied a copy of the inquiry report to the petitioner with an instruction to submit his comments thereon by way of filing a representation.

The inquiry officer found the petitioner guilty in part for both the charges alleged. The findings given by the inquiring authority reads as under:-

आरोप संख्या 1

"यद्यपि आरोपित अधिकारी ने अपने सन्देश में यह अंकित किया है कि अधिक खपत के कोयले की वसूली ठेकेदार से की जानी चाहिये थी लेकिन उसका स्वयं का यह दायित्व था कि ठेकेदार को उक्त कार्य के लिये भुगतान हेतु जो बिल बनाये गये, उनमें रिकवरी स्टेटमेण्ट में अधिक मात्रा या अधिक की गई खपत कोयले की मात्रा का उल्लेख करते, जिससे कि ठेकेदार से वसूली सम्भव हो, लेकिन आरोपित अधिकारी द्वारा ऐसा नहीं करके अपके कर्तव्य के प्रति लापरवाही बरती है। इस प्रकार आरोपित अधिकारी श्री नानकचन्द नागपाल भी ठेकेदार से अधिक खपत कोयले की राशि वसूल नहीं होने के लिये आंशिक रूप से दोषी है। अत: आरोप संख्या 1 को आरोपित अधिकारी के विरूद्ध में आंशिक रूप से पुष्टि होना पाता हूं ।

आरोप संख्या 2

विभागीय पक्ष द्वारा आरोप संख्या 2 के समर्थन में न तो कोई मौखिक साक्ष्य, न ही कोई लिखित साक्ष्य ऐसी प्रस्तुत की है, जिससे यह साबित होता हो कि आरोपित अधिकारी द्वारा कार्य की प्रगति का ध्यान रखने में लापरवाही बरती है। लेकिन विभागीय पक्ष द्वारा इस कार्य का जो लेखा जोखा (रनिंग बिल)प्रस्तुत किया है, उनके आधार पर यह मानना उचित है कि आरोपित अधिकारी श्री नानकचन्द नागपाल द्वारा इस कार्य का लेखा जोखा नियमानुसार नहीं बनाया, जिसके फलस्वरूप ठेकेदार द्वारा अधिक मात्रा में उपयोग किया गया कोयले की राशि उससे वसूल नहीं हुई। अत: मैं इन परिस्थितियों में आरोप संख्या 2 को भी आरोपित अधिकारी के विरूद्ध आंशिक रूप से साबित पाता हूं।"

The inquiring authority found the petitioner guilty for partial negligence due to which recovery of the amount for excess use of coal could not be made from the contractor. The petitioner in pursuant to the communication dated 7.10.1993 submitted a representation dated 27.3.1994 to the disciplinary authority making necessary comments to the extent he was found guilty by the inquiring authority.

The petitioner in the representation stated that he acted in quite vigilant manner by informing the Assistant Engineer and the Executive Engineer through a telegram (Ex.16 in inquiry record) about excess use of coal and to effect recovery of amount

for such excess use from the contractor. The petitioner also stated that running bill was prepared by Assistant Engineer Shri Shyopatram and Junior Engineer Shri Harnek Singh, who were posted in his place and was allowed to join without getting charge from him. The petitioner also stated with regard to charge No.2 that he was maintaining all accounts and bill properly and informed the higher authorities about excess use of coal on 4.5.1977 itself. He further stated that the bills, without giving any reference of excess use of coal and recovery required to be made from the contractor, were prepared by Shri Shyopatram Assistant Engineer after transfer of the petitioner. A specific averment was also made that the Assistant Engineer handed over railway parcel builties to the contractor to draw coal from railways directly. This created trouble in keeping vigil with regard to use of coal. The petitioner also referred the report of Auditor General (Ex.27) for making the payment to the contractor without effecting recovery by Assistant Engineer Shri Shyopatram at his own by deferring recovery while accepting an application submitted by the contractor. The petitioner also referred the judgment dated 16.12.1988 (Ex.10) passed by learned Additional District Judge No.2, Suratgarh wherein no employee of Irrigation Department was held liable for excess use of coal while passing a decree for recovery of a sum of Rs.1,02,203.26 against the contractor.

The disciplinary authority by order impugned dated 1.10.1996 while holding the petitioner fully guilty for both the charges imposed a penalty of compulsory retirement upon the petitioner, validity of which is called in question in present petition on following counts:-

(1)The inquiring authority found the petitioner partially guilty for charges but the disciplinary authority held the petitioner guilty absolutely for the charges, as such he disagreed with the findings given by the inquiring authority but no reason for such disagreement was ever given to delinquent before imposing penalty. Same caused a great prejudice to the petitioner as it deprived him to defend himself effectively.

(2)The order passed by the disciplinary authority is not a speaking and reasoned order as much as the contentions raised by the delinquent employee in the representation submitted by him was not considered and dealt with by the disciplinary authority while passing the order impugned dated 1.10.1996.

(3)The petitioner was charged for the allegations of negligence in discharging those duties which were not part of his duty chart.

(4)The punishment imposed is shockingly disproportionate to the delinquency proved.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the proceeding under Rule 18 of the Rules of 1958 was conducted against the petitioner and the procedure as prescribed under Rule 16 of the said Rules was adhered. The petitioner was found guilty by the inquiry officer and, therefore, the disciplinary authority after considering the delinquency of the petitioner imposed a punishment of compulsory retirement. The respondents also stated that the inquiry proceeding was conducted fairly, objectively and whatever punishment imposed upon the petitioner is commensurating to the delinquency.

The copy of the inquiry report was not placed on record initially either by the petitioner or by the respondents, therefore, by an order dated 11.8.2005 entire record of the disciplinary proceeding was called for. At the time of hearing the respondents produced the record and the same was perused and examined by the Court. The respondents also placed on record a photostat copy of the inquiry report as Anx.A/R/1 with an additional affidavit sworn-in by Shri Madanlal Verma, S.O., D.O.P., A-3 (Litigation), Government Secretariat, Jaipur.

Heard counsel for the parties.

The first contention of counsel for the petitioner is that the inquiry officer found the petitioner guilty to a very limited extent, therefore, on receiving the report of inquiry officer alongwith communication dated 7.10.1993 the petitioner submitted his comments by way of representation to the extent he was found guilty by inquiring authority. The disciplinary authority disagreed with the findings given by the inquiring authority and found the petitioner fully guilty for the charges levelled. No reason for such disagreement was ever supplied to the petitioner and the same caused prejudice to him to the extent that he failed to defend himself effectively. If the disciplinary authority would have supplied him the reasons for disagreement and his tentative decision to hold the petitioner fully guilty, the petitioner would have given sufficient explanation in all respect and aspects. It is urged by counsel for the petitioner that the petitioner was not at all negligent from duties as he informed every event to the higher authorities of the Department with regard to excess use of coal by the contractor and if the disciplinary authority would have given the reasons for disagreement the petitioner would have explained the circumstances quite conveniently. The counsel for the petitioner emphasised that non supply of such reasons has caused violation of principles of natural justice and reasonable opportunity. To substantiate

the contention the petitioner has placed reliance upon a judgment of this Court in the case of Dr.Safdar Hussain v. State of Rajasthan & Ors., SBCivil Writ Petition No.4490/93, decided on 2.8.2005 wherein this Court while relying upon the judgments of Hon'ble Supreme Court in the case of Punjab National Bank v. Chief Personal Officer, reported in AIR 1998 SC 2713, and in the case of State Bank of India & Ors. v. Arvind K.Shukla, reported in JT 2001(4) SC 415, held as under:-

> "It is well settled that wherever a delinquent employee succeeds before the inquiry officer to establish his innocence and the disciplinary authority defers with the findings given by the inquiry officer and imposes punishment then the disciplinary authority is required to provide tentative reasons for such disagreement to the delinquent employee. If no such reasons are provided to the delinquent employee by the disciplinary authority then the same shall certainly cause a prejudice to him as he shall not be in a position to place his version to defend himself with regard to the view taken by disciplinary authority."

Counsel for the respondents while agreeing with the fact that the inquiring authority found the petitioner partially guilty and the disciplinary

authority found the petitioner fully guilty for the charges levelled urged that in fact the disciplinary authority was not at all in disagreement with the inquiring authority but on basis of the findings given by the inquiring authority held the petitioner fully guilty for the charges.

I have examined the report of inquiry officer, the order passed by the disciplinary authority and also the representation submitted by the petitioner in pursuant to the communication dated 7.10.1993. The inquiry officer found the petitioner guilty to a very limited extent. With regard to charge No.1 inquiry officer accepted that the information was given by the petitioner by telegraphic message to the higher authorities with regard to excess use of coal and recovery of amount required to be made from the contractor. The inquiry officer found the petitioner guilty only for not mentioning the actual amount of excess use of coal and amount which is required to be recovered from the contractor. For charge No.2 the inquiry officer in unequivocal terms stated that no evidence to substantiate the allegation was produced by the prosecution, however, he held the petitioner guilty in part on basis of running bill. The disciplinary authority by order impugned found the petitioner guilty in totality for both the allegations. It is true that the disciplinary authority mostly relied upon the material on basis of which findings were given by the

inquiry officer but the finding for holding the petitioner guilty in totality changes complexion and gravity of the matter. The inquiry officer found the petitioner guilty partially and, therefore, the petitioner confined his representation to that extent only. The disciplinary authority on the other hand on basis of evidence available on record found the petitioner guilty in totality. This change of the finding is nothing but disagreement with the findings given by the inquiry officer though it is not said in specific terms in the order passed by the disciplinary authority. If the disciplinary authority was intending to hold the petitioner guilty for both the charges fully then it was obligatory upon him to communicate his tentative decision to the delinquent employee making him equipped with his contentions to defend himself. The mentioning of holding guilty for the charges in part and guilty in totality makes lot of difference and its changes the complexion and gravity of the issues involved. I am is of the considered opinion that the disciplinary authority erred while not supplying his tentative decision with regard to holding the petitioner fully guilty for the charges alleged and the same caused a prejudice to the delinquent employee which deprived him to defend himself effectively.

The second contention of counsel for the petitioner is that the order passed by the disciplinary authority is not a speaking and reasoned order.

From superficial perusal of the order impugned it appears that the disciplinary authority has considered the entire material and the evidence available on record but from its minute examination it makes quite clear that the disciplinary authority has not taken into consideration any of the contentions raised by the petitioner in his representation submitted in pursuant to the communication dated 7.10.1993. The petitioner in quite unambiguous terms stated in the representation that he informed the higher authorities with regard to excess use of coal. He also informed that the bills concerned were not prepared by him but by Assistant Engineer Shri Shyopatram and Junior Engineer Shri Harnek Singh. He has also stated that preparing of running bills was not part of his duty and a favour was given to the contractor by the Assistant Engineer and the then Executive Engineer. The petitioner also stated in the representation that the Assistant Engineer allowed the contractor to draw coal directly from the railways. The disciplinary authority in fact has not taken into consideration any of these contentions raised by the petitioner in his representation. It is well settled that the inquiry report is an adverse material supplied to the delinquent employee and a delinquent employee is having a right to explain the circumstances and to controvert the findings given by the inquiry officer. The disciplinary authority while passing an order

imposing a penalty is required to deal with the contentions raised by the delinquent employee in his representation. In the present case the order passed by the disciplinary authority lacks such consideration, therefore, the order impugned is certainly an unreasoned and non-speaking order.

The next contention of the counsel for the petitioner is that the duties for which negligence on part of the petitioner is alleged were not part of his duties, therefore, he cannot be held responsible for any kind of negligence in discharging such duties.

I am not at all impressed with this argument as those duties were part of the duties of the petitioner or not is not the question involved. The question involved is as to whether the petitioner has discharged the duties assigned to him with all efficiency and vigilance or was negligent in working?

The last contention of counsel for the petitioner is that the penalty imposed upon the petitioner is shockingly disproportionate to the delinquency proved.

I have examined the entire matter from this aspect too. The petitioner was charged for negligence of the duties. The inquiry officer found the petitioner guilty for negligence of duties to a limited extent.

The inquiry officer as well as the disciplinary authority nowhere reached at the conclusion that there was any ill intention or malice on part of the petitioner while remaining negligent on duties. Even if it is assumed that the inquiry officer as well as the disciplinary authority rightly found the petitioner guilty for the charges alleged then too in my considered opinion the punishment of compulsory retirement from service is highly disproportionate. The disciplinary authority while imposing a penalty is required to consider its effects and its proportionality with the delinquency. In present set of facts and circumstances the delinquency proved against the petitioner is not of such nature which may warrant termination from services by way of compulsory retirement.

Before parting with the matter, I consider it appropriate to note that in present case the government also not acted diligently. A charge sheet for the act or omission of the year 1975 was the subject matter of disciplinary action initiated in the year 1985. The inquiry was completed in the year 1993 and the petitioner submitted his representation making comments on the findings given by inquiring authority immediately thereafter but no action was taken by the disciplinary authority uptil 1.10.1996. This type of delay causes frustration in government servant which ultimately effects efficiency in service. All efforts

are required to be made to complete disciplinary proceedings at earliest, without ignoring the fairness and objectivity.

In view of whatever stated above this writ petition succeeds and deserves to be allowed. The same, therefore, is allowed. The order impugned passed by the disciplinary authority dated 1.10.1996 is hereby quashed. The petitioner is declared entitled for all consequential benefits.

(GOVIND MATHUR),J.

kkm/ps.